

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1731

Introduced by Senator Romero

February 20, 2004

An act to amend Section ~~5055~~ 6129 of the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1731, as amended, Romero. Corrections: *investigations: disclosure.*

Existing law establishes the Office of the Inspector General for specified purposes related to audits and investigations of the Department of Corrections, the Department of the Youth Authority, and certain other entities involved in corrections. Existing law requires the Inspector General and certain of these correctional entities to refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action.

Existing law provides that these provisions shall not preclude the Inspector General from following all applicable laws regarding confidentiality. Existing law provides that it is a misdemeanor for the Inspector General or an employee of the Inspector General to release any information received in connection with the exercise of the Inspector General's duties except as provided by the provisions of law regarding the Inspector General, or to release any information that is otherwise prohibited by law from being disclosed.

This bill would, in addition, prohibit any of these correctional entities required to refer criminal matters to law enforcement authorities from otherwise disclosing or entering into an officer's personnel file, any official information gathered during an investigative process that is

deemed to be confidential or privileged under any other provision of law. By restricting the circumstances under which this information may be disclosed by the Inspector General, the bill would expand the scope of an existing crime, and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires that all powers and duties granted to and imposed upon the Department of Corrections shall be exercised by the Director of Corrections, except where the powers and duties are expressly vested by law in the Board of Prison Terms.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 5055 of the Penal Code is amended to~~
2 ~~SECTION 1. Section 6129 of the Penal Code is amended to~~
3 ~~read:~~

4 6129. (a) (1) For purposes of this section, “employee”
5 means any person employed by the Youth and Adult Correctional
6 Agency, the Department of Corrections, the Department of the
7 Youth Authority, the Board of Corrections, the Board of Prison
8 Terms, the Youthful Offender Parole Board, or the Inspector
9 General.

10 (2) For purposes of this section, “retaliation” means
11 intentionally engaging in acts of reprisal, retaliation, threats,
12 coercion, or similar acts against another employee who has done
13 either of the following:

14 (A) Has disclosed or is disclosing to any employee at a
15 supervisory or managerial level, what the employee, in good faith,
16 believes to be improper governmental activities.

17 (B) Has cooperated or is cooperating with any investigation of
18 improper governmental activities.

(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay,

1 and shall be liable in an action for damages brought against him
2 or her by the injured party. If the State Personnel Board determines
3 that a lesser period of suspension is warranted, the reasons for that
4 determination must be justified in writing in the decision.

5 (2) Punitive damages may be awarded by the court if the acts
6 of the offending party are proven to be malicious. If liability has
7 been established, the injured party also shall be entitled to
8 reasonable attorney's fees as provided by law.

9 (e) Nothing in this section shall prohibit the employing entity
10 from exercising its authority to terminate, suspend, or discipline
11 an employee who engages in conduct prohibited by this section.

12 (f) (1) The Inspector General, the Youth and Adult
13 Correctional Agency, the Department of the Youth Authority, the
14 Department of Corrections, the Board of Corrections, the Youthful
15 Offender Parole Board, and the Board of Prison Terms shall refer
16 matters involving criminal conduct to the proper law enforcement
17 authorities in the appropriate jurisdiction for further action. ~~The~~

18 (2) *The referring entity specified in paragraph (1) is subject to*
19 *the following conditions:*

20 (A) (i) *Except as provided in clause (ii), the referring entity*
21 *shall not disclose, or enter into an officer's personnel file, any*
22 *official information gathered during an investigative process that*
23 *is deemed to be confidential or privileged under any other*
24 *provision of law.*

25 (ii) *Notwithstanding clause (i), the referring entity shall make*
26 *available to law enforcement authorities all information and*
27 *evidence gathered during the investigative process and shall*
28 *cooperate with any further investigation by those authorities.*

29 (B) (i) *The entity making a referral to the local district attorney*
30 *shall also notify the Attorney General of the action. ~~If~~*

31 (ii) *If the local district attorney refuses to accept the case, he or*
32 *she shall notify the referring entity who shall subsequently refer*
33 *the matter to the Attorney General. ~~If~~*

34 (iii) *If the local district attorney has not acted on the matter, the*
35 *referring entity shall notify the Attorney General. ~~If~~*

36 (3) *It is the intent of the Legislature that the Department of*
37 *Justice avoid any conflict of interest in representing the State of*
38 *California in any civil litigation that may arise in a case in which*
39 *an investigation has been or is currently being conducted by the*

Bureau of Investigation by contracting when necessary for private counsel.

(g) Upon the completion of any investigation, the Inspector General shall prepare a written report, which shall be held as confidential and disclosed in confidence, only to the Secretary of the Youth and Adult Correctional Agency, the Governor, and the appropriate director or law enforcement agency. A summary of the report's findings and conclusions shall be made available, upon request, to the person who requested the investigation, the person or persons who were the subjects of the investigation, and to any Member of the Legislature.

(h) Nothing in this section shall preclude the office of the Inspector General from following all applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act, and the provisions of Section 832.7 relating to the disposition notification for complaints against peace officers.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~read:~~

~~5055.—All powers and duties granted to and imposed upon the Department of Corrections shall be exercised by the Director of Corrections, except where the powers and duties are expressly vested by law in the Board of Prison Terms.~~

~~Whenever a power is granted to the Director of Corrections or a duty is imposed upon the director, the power may be exercised or the duty performed by a deputy of the director or by a person authorized pursuant to law by the director.~~